Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	IB Docket No. 98-148
1998 Biennial Regulatory Review -- Reform of the International Settlements Policy and Associated Filing Requirements	)	
Regulation of International Accounting Rates	)	CC Docket No. 90-337

NOTICE OF PROPOSED RULE MAKING

Adopted: August 6, 1998 Released: August 6, 1998

Comment Date: September 16
Reply Date: October 16

By the Commission: Commissioner Furchtgott-Roth issuing a statement.

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available electronically under our pending electronic filing system.

5. We believe it is important to consider these proposals to bring our rules in line with the significant changes in international telecommunications markets that have occurred recently. Our goal is to lower consumer prices by bringing the rates for terminating international calls as close as possible to cost and to foster innovation in the provision of international telecommunications services for U.S. carriers and consumers. To that end, we seek to promote further growth of competition in international markets and ensure that our rules help foster a market-based approach to terminating international calls. We further seek to lessen the regulatory burden on U.S. carriers by removing rules that are not necessary. We encourage comment on the proposals in this *Notice* and on any other approaches that could help achieve our goal.

II. Background

6. In a series of decisions starting in 1936, the Commission has regulated U.S. carrier participation in bilateral accounting rate negotiations with foreign carriers,[4] culminating with the adoption of the *ISP Order* in 1986.[5] This policy was developed to prevent foreign monopoly carriers from "whipsawing" U.S. carriers, or from playing U.S. carriers off against each other to the disadvantage of U.S. carriers and U.S. ratepayers.[6] It requires: (1) the equal division of accounting rates; (2) nondiscriminatory treatment of U.S. carriers; and (3) proportionate return of inbound traffic. As we stated in our *ISP Order*, "[t]he policy of uniform settlements rates arose in response to the unique situation in the international telecommunications arena which places single governmental or quasi-governmental entities from other nations in direct negotiation with multiple private U.S. entities for the formation of operating agreements to arrange international services."[7] To ensure compliance with the ISP and other relevant rules, the Commission requires that all accounting rate agreements be filed with the Commission and made public.[8] The International Bureau may reject a particular

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[4] *See Mackay Radio and Telegraph Company*, Inc., 2 FCC 592 (1936) *aff'd Mackay Radio and Telegraph Co. v. FCC*, 97 F.2d 641 (D.C. Cir. 1938); *Modifications of Licenses in the Fixed Public and Fixed Public Press Services*, 11 FCC 1445 (1946); *Mackay Radio and Telegraph Company*, 25 FCC 690, 733-34 (1951), *rev'd on other grounds sub nom., RCA Communications, Inc. v. FCC*, 210 F. 2d 694 (D.C. Cir. 1952), *vacated and remanded*, 346 U.S. 86 (1953); *TRT Communications Corp.*, 46 FCC 2d 1042 (1974); *Uniform Settlement Rates on Parallel International Communications Routes*, Docket No. 21265, Memorandum Opinion and Order, 84 FCC 2d 121 (1980) (*USP Order*).

[5] *Implementation and Scope of the Uniform Settlements Policy for Parallel Routes*, CC Docket No. 85-204, Report and Order, 51 Fed. Reg. 4736 (Feb. 7, 1986) (*ISP Order*), *modified in part on recon.*, 2 FCC Rcd 1118 (1987) (*ISP Reconsideration*), *further recon.*, 3 FCC Rcd 1614 (1988). *See also Regulation of International Accounting Rates*, 6 FCC Rcd 3552 (1991), *on recon.*, 7 FCC Rcd 8049 (1992). *See also* 47 C.F.R. 64.1001 (1998).

[6] For a discussion of whipsawing and its harmful effects, see *USP Order*, 84 FCC 2d 121, ¶ 4-5.

[7] *See ISP Order*, 51 Fed. Reg. 4736, ¶ 3.

[8] *See* 47 C.F.R. 64.1001(l)(2) (1998).

there are alternative means of terminating traffic in the foreign market.

9. The ISP may act to inhibit competition among U.S. international carriers in several ways. First, the ISP could potentially reduce incentives for U.S. carriers to negotiate low settlement rates. To a certain extent, uncertainty regarding settlement rates paid by competing U.S. carriers encourages carriers to bargain for the lowest possible settlement rate. Where each carrier is unsure of the rate negotiated by the other carriers, only aggressive negotiating will ensure that it is not foregoing the opportunity to negotiate a rate lower than a competitor. Conversely, where the rate negotiated by one carrier is available to all other carriers whether they negotiate or not, the negotiating carrier has a reduced incentive to negotiate aggressively because no matter how aggressively it negotiates, it will be unable to achieve a cost advantage vis-a-vis its competitors. Further, the carriers that are able to obtain the same rates negotiated by the other carrier have a reduced incentive even to enter into negotiations.[15]

10. Second, the proportionate return component of the ISP exerts a distorting effect on the market for international services because it can make it difficult for new carriers to enter the market.[16] The volume of outbound and inbound traffic are tied together under the proportionate return regime, with carriers receiving a settlement credit for each additional inbound minute. As a result, carriers can lower their costs by maximizing their outbound traffic. When new entrants enter the market, however, they have no record of outbound traffic and thus do not receive the benefits of proportionate return of inbound traffic to offset terminating outbound traffic. This means that, at least for an initial period after entry, new entrants may have difficulty competing against incumbents because they have a higher cost structure.

11. Finally, the ISP may inhibit competition at the retail level. Settlement rates are a significant component of the costs of providing international switched services. Because these rates are made public and all U.S. carriers pay the same settlement rates to terminate traffic to a specific country, all carriers have a clear knowledge of a significant component of their competitors' costs. To the extent all carriers are aware of competitors' costs, such knowledge exerts a chilling effect on competition and it is therefore less likely that carriers will compete aggressively. In such an environment, prices will stabilize and there will be little competition on price. If the ISP did not exist, and U.S. carriers were each able to enter into independent negotiations for the termination of international traffic without a significant danger of whipsawing by foreign carriers, U.S. carriers' costs would differ, there would be greater uncertainty, and greater pressure on U.S. carriers to compete on price, all to the benefit of U.S. consumers.

12. To address the potential anticompetitive effects of applying the ISP on routes where there is competition in the foreign market, the Commission has, over the past several years, focused

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[15] The Commission has noted the negative effects of price signalling associated with requiring the public tariffing of retail rates in the past. *See Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket 96-61, Second Report and Order, 11 FCC Rcd 20,730, (1996), *stayed, MCI Telecommunications Corp. v. FCC*, No. 96-1459 (D.C. Cir. Feb 13, 1997), Order on Reconsideration, 12 FCC Rcd 15,014 (1997). We are concerned here that the price signalling effects of public disclosure of accounting rate information and contractual terms may have a similar anticompetitive impact.

[16] The proportionate return component of the ISP is codified at 47 C.F.R. § 43.51(e).

and proportionate return requirements where the foreign market is open to competition.[20] The Commission also stated that it would allow settlement arrangements that deviate from the ISP where the foreign market is not competitive, but where the agreement would promote market-oriented pricing and competition while precluding the abuse of market power on the route.[21]

14. We believe these policies have been successful in encouraging increased competition among U.S. carriers and lowering settlement rates on many international routes. However, because these policies allow for deviation from the Commission's restrictive ISP only in narrowly-defined circumstances, their impact on the U.S. market for international message telephone service (IMTS) has been limited. As described in this *Notice*, we tentatively conclude that changing market conditions may warrant a further liberalization of our settlements policy.

III. Discussion

15. We believe that we should review our international settlements policies to lift unnecessary regulatory burdens in light of the significant changes in international telecommunications markets being brought about by the WTO Basic Telecommunications Agreement.[22] The WTO Basic Telecom Agreement has accelerated the global trend toward privatization and liberalization of telecommunications markets. As a result of that agreement, 28 countries committed to introducing competition for telecommunications services as of January 1, 1998. In those countries, new entrants are already providing service to customers at lower rates and higher standards of service than the former monopoly incumbent provider. For example, in northern Europe, Australia, New Zealand and elsewhere, competitive carriers are providing traditional telecommunications services along with innovative new services to customers in those countries. Given that the ISP was intended to apply to arrangements with foreign monopoly carriers, we believe we should reexamine our international

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[20] Under the standard adopted in the *Flexibility Order* in 1996, parties seeking approval of a flexible settlement arrangement were required to show that the destination market satisfied the effective competitive opportunities (ECO) test. *Flexibility Order*, 11 FCC Rcd 20,078-84 ¶¶ 36-51. In 1997, the Commission modified this standard for parties seeking approval of flexible settlement arrangements for service to WTO Member countries. The *Foreign Participation Order* adopted a presumption in favor of flexible settlement arrangements for service to WTO Member countries. The presumption can only be rebutted by a showing that there are not multiple facilities-based competitors providing service in the foreign market that possess the ability to terminate international traffic. *Foreign Participation Order*, 13 FCC Rcd 12 FCC Rcd at 24,026-30 ¶¶ 302-313.

[21] The *Flexibility Order* maintains two safeguards for flexible arrangements: (i) alternative arrangements between affiliated carriers and those involved in non-equity joint ventures must be publicly filed with the Commission regardless of the amount of traffic affected; and, (ii) alternative arrangements affecting more than 25 percent of the inbound or outbound traffic on a particular route must also be publicly filed and may not contain unreasonably discriminatory terms and conditions. *See Flexibility Order*, 11 FCC Rcd 20,078-84 ¶¶ 36-51; *see also Foreign Participation Order*, 12 FCC Rcd at 24,026-30 ¶¶ 302-313.

[22] The results of the WTO basic telecommunications services negotiations are incorporated into the General Agreement on Trade in Services (GATS) by the Fourth Protocol to the GATS, April 30, 1996, 36 I.L.M. 366 (1997). These results, as well as the basic obligations contained in the GATS, are referred to herein as the "WTO Basic Telecom Agreement".

that whipsawing is not a significant danger. We thus seek comment in this *Notice* on whether we should continue to apply the ISP and related filing requirements to U.S. carrier arrangements with foreign carriers from WTO Member countries that lack market power in the relevant foreign telecommunications market.[26]

19. We note that in the *Foreign Participation Order,* we modified the No Special Concessions rule to apply only to dealings with foreign carriers that possess market power in the foreign market.[27] We stated in that order that our No Special Concessions rule is intended to address the concern that an exclusive vertical arrangement between a U.S. carrier and a foreign carrier with market power on the foreign end could result in harm to competition and consumers in the U.S. market. By contrast, we found it unlikely that an exclusive arrangement between a U.S. carrier and a foreign carrier that lacks market power would result in such harm.[28]

20. With respect to the ISP, there also appears to be little danger that a foreign carrier that lacks market power will have the ability to whipsaw U.S. carriers. Indeed, without market power over facilities and services essential to terminate international traffic, an attempt at whipsawing by a foreign carrier that lacks market power should be countered by a defection by U.S. carriers to another operator. We thus tentatively conclude that we should not apply the ISP to agreements concluded with foreign carriers from WTO Member countries that lack market power on the relevant route. U.S. carriers would therefore be free to enter unencumbered into commercial negotiations with foreign carriers in WTO Member countries that lack market power. We seek comment on whether carriers that lack market power in the foreign market may retain some ability to whipsaw where government policies or other foreign market conditions preclude real competition. We tentatively conclude that the long term benefits of removing our ISP for arrangements with foreign carriers that lack market power will outweigh any short-term risks involved. We seek comment on this tentative conclusion.

21. We also seek comment on whether to exempt U.S. carriers from filing contracts and accounting rate information under section 43.51 and 64.1001 of our rules for arrangements with foreign carriers that lack market power. Section 43.51 of the Commission's rules currently requires U.S. carriers to file all contracts entered into with their foreign correspondents with respect to the exchange of services, the interchange or routing of traffic, and matters concerning rates, accounting rates, division of tolls, or the basis of settlement of traffic balances.[29] In addition, carriers must file all changes in accounting rate arrangements under Section 64.1001.[30] In light of the exemption to the No Special Concessions rule for arrangements with carriers that lack market power, and our proposal, above, not to apply the ISP to arrangements with carriers that lack market power in WTO Member countries, we question whether there is a strong rationale for retaining these filing requirements. The filing requirements in sections 43.51 and 64.1001 enable us to enforce our ISP and maintain

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[26] *See Foreign Participation Order,* 12 FCC Rcd at 23,959-62 ¶¶ 160-163.

[27] *Id.*, 12 FCC Rcd at 23,955-65, ¶¶ 150-170.

[28] *Id.*

[29] 47 C.F.R. § 43.51.

[30] *See* 47 C.F.R. § 64.1001.

that carriers do not engage in exclusive dealings with foreign carriers that possess market power. This oversight should, however, be balanced with our goal of allowing carriers the freedom to negotiate agreements freely with carriers that lack market power. We seek comment on several alternatives for determining whether to apply our ISP and related filing requirements to a particular arrangement. First, we could adopt a rule that arrangements with foreign carriers with less than 50 percent market share do not have to be filed, and not require any filing to substantiate the claim that the foreign carrier lacks market power. Second, we could require that a carrier that seeks to enter an arrangement with a foreign carrier that lacks market power identify the route and file a certification that the carrier on the foreign end of the international route lacks market power, without revealing the identity of the foreign correspondent. Third, we could require a carrier to identify the foreign carrier and publicly file data indicating that the foreign carrier possesses less than 50 percent market share in each of the relevant markets or file a petition for declaratory ruling that a foreign carrier with greater than 50 percent market share nevertheless lacks market power. We also seek comment on whether, if we adopt this third proposal, we should allow confidential treatment for such filings.

24. We seek to simplify our regulatory requirements to the greatest extent possible, consistent with our commitment to preventing abuse of market power by foreign carriers in their dealings with U.S. carriers. We seek comment on whether our proposal to eliminate the ISP and related filing requirements for arrangements with foreign carriers that lack market power in WTO Member countries achieves this goal. Our proposals would essentially eliminate regulatory oversight for arrangements between U.S. carriers and foreign carriers that lack market power in WTO Member countries. We tentatively conclude that this approach is warranted because carriers without market power have a substantially diminished ability to whipsaw U.S. carriers. We further tentatively conclude that this approach is consistent with the regulatory framework we adopted in our *Foreign Participation Order*. We seek comment on our proposed approach for regulating arrangements between U.S. carriers and foreign carriers that lack market power in WTO Member countries, and on any other approaches that would further our goals.

B. Application of the ISP and Related Filing Requirements to Arrangements with Foreign Carriers in Liberalized Markets

25. We also seek comment on whether, under certain circumstances, we should decline to apply the ISP and related filing requirements to U.S. carrier arrangements with all foreign carriers in selected WTO Member country markets, including arrangements with those carriers that possess market power. In the *Flexibility Order*, we recognized that the ISP is not necessary in liberalized markets, and could potentially inhibit competition between U.S. carriers. We adopted a standard in that *Order*, which we subsequently revised in our *Foreign Participation Order*, for determining when a foreign market was sufficiently competitive that we would allow U.S. carriers to deviate from the ISP in their settlement arrangements with foreign carriers.[33] Under our flexibility policy, the ISP still

[33] Under the standard adopted in the *Flexibility Order* in 1996, parties seeking approval of a flexible settlement arrangement were required to show that the destination market satisfied the effective competitive opportunities ECO test. *Flexibility Order*, 11 FCC Rcd 20,078-84 ¶¶ 36-51. In 1997, the Commission modified this standard for parties seeking approval of flexible settlement arrangements for service to WTO Member countries. The *Foreign Participation Order* adopted a presumption in favor of flexible settlement arrangements for service to WTO Member countries. The presumption can only be rebutted by a showing that there are not multiple facilities-based competitors providing service in the

switched traffic over private lines, deviation from the ISP is already allowed on such routes so long as traffic flows over private lines.

28. Alternatively, we seek comment on whether a settlement rate threshold lower than a benchmark rate is appropriate. For example, we could apply the current best practices rate of $.08 per minute, established in our *Benchmarks Order*, as the threshold.[37] Under this proposal, we would decline to apply our ISP on routes where at least 50 percent of the traffic is settled at a rate of $.08 per minute or less. Commenters suggesting an alternative settlement rate threshold should provide a documented basis for any threshold suggested.

29. We also seek comment on whether any other standard is appropriate. For instance, we could decline to apply the ISP only in cases where 50 percent of traffic on the route is settled at or below benchmark rates *and* the foreign market permits U.S. carriers to provide service via ISR. We seek comment on these alternatives, and on any other alternative standard we could adopt to identify routes on which we need not apply our ISP.

30. We also seek comment on whether we should decline to apply our Section 43.51 contract filing and Section 64.1001 accounting rate filing requirements to the extent we decline to apply the ISP on certain routes.[38] As we noted above, there is little rationale in maintaining the Section 64.1001 accounting rate filing requirement where we do not apply the ISP and, in fact, requiring public filing of contracts could preclude carriers from negotiating some settlement arrangements that could be pro-competitive.[39] On the other hand, a foreign carrier with market power may still have the ability to whipsaw U.S. carriers, even on routes where we permit ISR. We also recognize that arrangements between U.S. carriers and affiliated foreign carriers may pose competitive concerns. We thus seek comment on whether we should require public filing, require confidential filing or remove the filing requirements altogether for arrangements on certain routes where we decline to apply the ISP. For instance, if we remove these filing requirements generally, should we maintain them for arrangements entered into with foreign carriers with market power, or only for affiliated foreign carriers with market power?

31. Our proposal to eliminate the ISP and related filing requirements on routes where we permit ISR would greatly reduce regulatory oversight for arrangements between U.S. carriers and foreign carriers on those routes. We believe that our proposal will further our goal of eliminating unnecessary regulatory burdens, while continuing to prevent abuse of market power by foreign carriers in their dealings with U.S. carriers. We seek comment on our proposed approach for eliminating regulatory requirements on routes where we believe they are not necessary, and on any other approaches that would further our goals.

C. Revisions to the Flexibility Policy

32. We further seek comment on what modifications we can make to our flexibility policy

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[37] *Benchmarks Order*, 12 FCC Rcd at 19,865-71, ¶¶ 121-135.

[38] 47 C.F.R. §§ 43.51, 64.1001.

[39] *See supra* ¶ 21.

our safeguards. We also seek comment, however, on whether we should modify the safeguard that currently requires all flexible arrangements entered into with affiliated carriers and joint-venture partners to be publicly filed with the Commission. Where the U.S. carrier's foreign affiliate does not possess market power in the foreign market, there is little danger that a flexible arrangement would have anticompetitive effects. The current safeguard, however, requires a U.S. carrier to make public flexible arrangements entered into with its foreign affiliate even if it lacks market power. We therefore seek comment on whether we should only require public availability of flexible arrangements entered into by U.S. carriers with affiliated carriers or with joint-venture partners that possess market power in the foreign market.

35. If we adopt these proposals, we propose to modify the flexibility policy to require only that a carrier file a certification that the arrangement does not trigger our flexibility safeguards (*i.e.*, that it affects less than 25 percent of traffic on the route and is not with an affiliate or joint venture partner) and to identify the destination market. We propose to permit other parties to file comments to rebut the presumption in favor of flexibility (demonstrating that the foreign market lacks multiple facilities-based competitors), but not comment on the nature of the flexible arrangement itself. We believe that this approach would enable U.S. carriers to enter into innovative arrangements that would otherwise not be viable if the full contents of the agreement were disclosed.

36. We note that these proposed modifications to our flexibility rule may not be needed if we adopt our proposals in this *Notice* to lift the ISP and related filing requirements for settlement arrangements with foreign carriers that lack market power in WTO Member countries and settlement arrangements on WTO country routes where we permit ISR. Our flexibility policy provides an exception to the ISP. Thus, to the extent our ISP does not apply, our flexibility rules would be irrelevant. We seek comment on the proposals in this *Notice* for modifying our flexibility policy, and on any other modifications to our flexibility policy that would further our goals of encouraging the negotiation of more market-based arrangements and eliminating unnecessary regulatory burdens.

D. Revisions to ISR Rules

37. We also seek comment on whether we should modify our ISR rules as a mechanism for putting greater pressure on settlement rates. In our *Accounting Rate Policy Statement*, we stated our support for new services that encourage arbitrage of the international accounting rate system, including ISR.[45] We have also recognized, however, that authorization of ISR could lead to "one-way bypass" of the accounting rate system, where private lines are used only for inbound switched traffic into the United States while outbound switched traffic from the United States remains subject to the accounting rate system. Such one-way bypass could increase the net settlement payments of U.S. carriers, and ultimately could lead to increased calling prices for U.S. consumers. To prevent one-way bypass, we have adopted rules that permit carriers to engage in ISR only on routes to WTO Member countries where 50 percent of the traffic is settled at benchmark rates, *or* to any WTO country where the foreign market offers equivalent resale opportunities.[46] For service to non-WTO Member countries, our rules permit ISR only on routes where 50 percent of the traffic is settled at benchmark rates, *and* where the foreign market offers equivalent resale opportunities.

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[45] *Policy Statement on International Accounting Rate Reform*, 11 FCC Rcd 3146, 3152-53, ¶¶ 21-23.

[46] *See* n. 18, *supra*.

maintain the No Special Concessions rule for U.S. carrier arrangements with foreign carriers with market power if we adopt the proposal in this *Notice* not to apply the ISP and related filing requirements on ISR routes.[50] It may be necessary to maintain the No Special Concessions rule because it applies more broadly than the ISP. For example, the No Special Concessions rule prohibits U.S. carriers from agreeing to accept from a foreign carrier that possesses market power exclusive arrangements with respect to operating agreements, interconnection of international facilities, private line provisioning and maintenance, as well as quality of service. The ISP, however, applies only to the settlement of international traffic and allocation of return traffic.[51] We seek comment on whether such exclusive arrangements with a foreign carrier that possesses market power could adversely affect competition in the U.S. market on routes where we permit ISR, such that we should continue to apply the No Special Concessions rule.

41. We also seek comment on the extent to which the No Special Concessions rule applies within the context of our ISR and flexibility policies in light of the changes to our rules proposed in this *Notice*. In the *Flexibility Order* the Commission stated that arrangements approved under the flexibility rules are permitted as an exception to the No Special Concessions rule.[52] By contrast however, we have not made clear how the No Special Concessions rule applies to the settlement of traffic under an ISR arrangement. An ISR arrangement between a foreign carrier and a U.S. carrier, for example, could be viewed as a prohibited special concession if the foreign carrier also exchanges traffic in a traditional correspondent relationship with other U.S. carriers under financial terms and conditions that differ from those governing the ISR arrangement. We believe that such an interpretation of our No Special Concessions rule was not contemplated when we adopted our ISR policy.[53] We therefore tentatively conclude that our No Special Concessions rule does not apply to the terms and conditions under which traffic is settled, including allocation of return traffic, by a U.S. carrier on an ISR route. Notwithstanding an ISR arrangement, however, the No Special Concessions rule would prohibit exclusive arrangements with a foreign carrier with market power with respect to interconnection of international facilities, private line provisioning and maintenance, as well as quality of service. We seek comment on this tentative conclusion. We also seek comment on whether we should apply the No Special Concessions rule in this manner if we decide to retain the No Special Concessions rule for U.S. carrier arrangements that deviate from the ISP on ISR routes, as discussed above.[54]

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provisioning and maintenance times; or
"(3) any information, prior to public disclosure, about a foreign carrier's basic network services that affects either the provision of basic or enhanced services or interconnection to the foreign country's domestic network by U.S. carriers or their U.S. customers." 47 C.F.R. § 63.14(b).

[50] *See* Section III.B., *supra*.

[51] *See supra* ¶ 6.

[52] *Flexibility Order*, 11 FCC Rcd at 20,084, ¶ 51.

[53] *See International Resale Order*, 7 FCC Rcd 559.

[54] *See supra* ¶ 40.

retroactive changes in the applicable accounting rate. Modification filings are automatically granted 21 days after filing if the filing is unopposed and the International Bureau has not notified the applicant that approval of the modification may not serve the public interest. Where a filing is not automatically granted, approval is only granted by formal action of the Bureau.

45. When the Commission established the option of filing an accounting rate notification rather than a modification (or ISP waiver, as it was previously known),[57] the Commission found that allowing a simple reduction in the accounting rate to go into effect upon filing would reduce regulatory impediments to lowering accounting rates.[58] Since that time, the Bureau has gained significant experience with these procedures and received information about their effectiveness. The Bureau's experience indicates that there is confusion regarding the filing procedures applicable to a given agreement. For instance, in many cases carriers seek to use notification filing procedures for accounting rate arrangements that should be filed under modification procedures, causing increased staff workload and additional paperwork for filing parties.

46. In light of the confusion caused by the existence of two standards for accounting rate filings, along with the fact that few filings are made under the notification procedure,[59] we find that adopting the notification filing procedure has not had its intended effect of removing regulatory barriers to simple reductions in accounting rates. On the contrary, it is our experience that having two procedures for accounting rate filings has made procedures more complicated than they need to be. We therefore tentatively conclude that we should remove the option of filing a notification and require that all accounting rate filings be governed under the existing procedures for accounting rate modifications. We seek comment on this tentative conclusion.

47. Our international settlements policy requires that U.S. carriers not accept exclusive settlement arrangements with foreign carriers and prohibits U.S. carriers from entering into any arrangement not made available to all U.S. carriers providing service on the route. For this reason, carriers making modification or notification filings are required under our rules to serve a copy of their filings on all facilities-based carriers providing services on the same route.[60] This requirement was developed when only two or three carriers provided facilities-based service on a given route. Today, on the U.S.-Canada route, there are six carriers providing facilities-based service. We seek comment on whether to continue to maintain this service requirement, or whether another approach is warranted. Further, petitions seeking approval of a flexible settlement arrangement are placed on public notice. We received comment in the *Foreign Participation* proceeding that urged us also to adopt a public notice approach for accounting rate filings. We stated in the *Foreign Participation Order* that we did not find it necessary at that time to adopt the proposal, but that we reserved the

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[57] *See Flexibility Order*, 11 FCC Rcd 20,063.

[58] *See International Settlement Rates*, CC Docket 90-337, First Report and Order, FCC 91-157, 6 FCC Rcd 3552 (1991) (*First Report and Order*).

[59] In 1997, the Commission received seven notification filings and 808 modification filings.

[60] 47 C.F.R. 63.1001(k); *see First Report and Order*, 6 FCC Rcd 3552.

may need to be modified in order to stimulate competition and allow carriers to respond more rapidly to changing conditions and ultimately lower calling prices for consumers. As noted above, in the *Foreign Participation Order*, the Commission modified the standard under which it would consider alternative settlement arrangements. In addition, also discussed above, the Commission modified its No Special Concessions rule. These changes, together with the proposals described in this notice will likely have a significant effect on our flexibility framework. We therefore invite interested parties to comment on the issues raised in the petitions for reconsideration of the *Flexibility Order* in light of the recent changes in our rules and the proposals detailed above.

IV. Procedural Issues

A. *Ex Parte* Presentations

52. This is a permit-but-disclose notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, 1.1206.

B. Initial Regulatory Flexibility Certification

53. The Regulatory Flexibility Act (RFA)[65] requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[66] The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[67] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[68] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[69] The rule changes proposed in this *Notice* may directly affect approximately 10 facilities-based international telecommunications carriers. Neither the Commission nor SBA has developed a definition of "small entity" specifically applicable to these international carriers. Therefore, the definition to be used is the most appropriate definition under the SBA rules,

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[65] The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[66] 5 U.S.C. § 605(b).

[67] *Id.* § 601(6).

[68] *Id.* § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. § 632).

[69] Small Business Act, 15 U.S.C. § 632.

also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

57. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 1919 M St. N.W., Room 222, Washington, D.C. 20554.

58. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Donna Christianson, International Bureau, Federal Communications Commission, 2000 M Street, N.W., Room 836, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the commenter's name, proceeding (Docket No.-98-148), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

59. Written comments by the public on the proposed and/or modified information collections are due on or before 60 days after publication of this *Notice* in the *Federal Register.* In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov.

E. Ordering Clauses

60. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4(i)-(j), 201(b), 214, 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 214, 303(r), and 403, this Notice of Proposed Rulemaking IS HEREBY ADOPTED.

61. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary